

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TRACY DEE CHATMAN,

Petitioner,

1:02-cv-06170 ALA HC

vs.

EDWARD ALAMEIDA, et al.,

Respondents.

ORDER

Petitioner Tracy Chatman is a state prisoner proceeding pro se with a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On December 3, 2007, judgment was entered in this court denying the petition. On February 7, 2008, petitioner filed a notice of appeal. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); FED. R. APP. P. 22(b).

Federal Rule of Appellate Procedure 22(b) requires the district court judge who rendered a judgment denying such petition to “either issue a certificate of probable cause or state the reasons why such a certificate should not issue.”

The timely filing of a notice of appeal is a jurisdictional requirement. *Scott v. Younger*, 739 F.2d 1464, 1466 (9th Cir. 1984). Here, the time limit for filing a notice of appeal following entry of judgment is thirty days. *See* FED. R. APP. P. 4(a). Petitioner's notice of appeal in this action was filed more than thirty days after entry of judgment.

1 The United States Court of Appeals for the Ninth Circuit has held that the issuance of a  
2 certificate of probable cause cannot vest the court of appeals with jurisdiction if jurisdiction is  
3 not proper in that court. *Hayward v. Britt*, 572 F.2d 1324, 1325 (9th Cir. 1978). The rationale of  
4 *Hayward* applies with equal force to a certificate of appealability. For these reasons, the court  
5 declines to issue a certificate of appealability.

6 IT IS SO ORDERED.

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8 DATED: February 11, 2008

9 /s/ Arthur Alarcón  
10 UNITED STATES CIRCUIT JUDGE  
11 Sitting by Designation  
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